RESCISSION — RESCISSION FOR FRAUD OR MISTAKE — MISREPRESENTATION AS TO FOREIGN LAW OF INCORPORATION. — The agent of a corporation induced subscription to its stock by a false representation that it was secured by the law of the state in which the company was incorporated. The subscriber was a resident of another state. *Held*, that the subscriber is not entitled to rescind. *Grone* v. *Economic Life Ins. Co.*, 80 Atl. 809 (Del., Ct. Ch.).

Generally, a subscriber for stock in a corporation may rescind if his subscription was induced by misrepresentation, whether fraudulent or honest. *River Silver Mining Co.* v. *Smith*, L. R. 4 H. L. 64; *Maine* v. *Midland Investment Co.*, 132 Ia. 272. But where the misrepresentation concerns the laws governing the corporation, the courts usually deny the subscriber a right of rescission. The cases proceed on two theories. Where the misrepresentation is as to the terms of a general incorporation law, it is held that this cannot avail the subscriber, being a representation of the law, of which he is chargeable with notice. *Russell* v. *Alabama Midland Ry.*, 94 Ga. 510. *Cf. Peters* v. *Lincoln & N. W. R. Co.*, 14 Fed. 319. This theory should not defeat the subscriber in the principal case, since a misrepresentation as to foreign law should be treated as a misrepresentation of fact. See *Upton* v. *Englehart*, Fed. Cas., No. 16,800. But where the misrepresentation is as to the terms of a special charter, the courts have taken the broader ground that the subscriber is chargeable with knowledge of the paramount law of the corporation of which he is to become a member. *Ellison* v. *Mobile & Ohio R. Co.*, 36 Miss. 572. See *Wight* v. *Shelby R. Co.*, 16 B. Mon. (Ky.) 4, 6. This theory sustains the principal case, and might well have been a short ground for deciding many cases in deceit, where the plaintiff was barred because the misrepresentation was honestly made. See *Derry* v. *Peek*, 14 App. Cas. 337.

RESTRAINT OF TRADE — SHERMAN ANTI-TRUST LAW — FORM OF COMBINATION. — The United States brought suit for the dissolution of the Standard Oil Company of New Jersey, a holding company, as a combination in restraint of interstate trade under the Sherman Anti-Trust Law. The evidence showed a suppression of competition by the combination by unfair methods. *Held*, that the defendant constitutes an illegal combination under §§ 1 and 2 of the Act. *Standard Oil Co.* v. *United States*, 221 U. S. 1.

The United States brought suit for the dissolution of the American Tobacco Company as a combination in restraint of interstate trade under the Sherman Anti-Trust Law. The control of the primary defendant over its subsidiary companies was effected partly by stock ownership and partly by the ownership of the plants of those companies. The combination had used unfair methods to suppress competition and to attain monopoly control. *Held*, that the defendant constitutes an illegal combination under §§ 1 and 2 of the Act. *United States* v. *American Tobacco Co.*, 221 U. S. 106. See pp. 31–58, and NOTES, p. 71.

RESTRICTIONS AND RESTRICTIVE AGREEMENTS AS TO USE OF PROPERTY — EXTINGUISHMENT OF RESTRICTION BY SURRENDER TO PARTY WITHOUT NOTICE. — A. had leasehold interests in two neighboring shops, in one of which he carried on the trade of a pork butcher, and in the other that of a general butcher. A. sold his lease and business in the latter to the plaintiff, covenanting not to engage in the trade of general butcher within three miles. The defendant, who had notice of this covenant, decided to buy A.'s business; so A. surrendered his lease in the first shop to the landlord, who had no notice of the covenant. The defendant took out a new lease of the premises and there carried on the business of general butcher, from continuing which the plaintiff sought to enjoin him. *Held*, that the restriction is extinguished. *Wilkes* v. *Spooner*, [1911] 2 K. B. 473 (K. B. D., C. A.).

The judgment of the King's Bench Division, which enjoined the defendant

from continuing business, is rightly reversed by the principal case, on the ground that the covenant no longer attached to the land after the surrender of the premises to the landlord, who had no notice of the restriction. For a discussion of the principles involved, see 24 HARV. L. REV. 574.

SALES — IMPLIED WARRANTIES — REASONABLE FITNESS FOR PARTICULAR PURPOSE. — The defendant bought some cloth of the plaintiff who knew it was to be used for making clothes. The plaintiff sued for the balance of the price which the defendant refused to pay because the cloth was unfit for the intended purpose. *Held*, that there was an implied warranty of the cloth's availability for use in making clothes. *Rhodesia Mfg. Co.* v. *Tombacher*, 129 N. Y. Supp. 420 (Sup. Ct., App. Term). See NOTES, p. 75.

TAXATION — GENERAL LIMITATIONS ON THE TAXING POWER — CONSTITUTIONALITY OF SALE OF TAX LIENS. — A statute authorized the sale of tax liens by a city to private persons, and gave the purchaser the right to enforce these liens by foreclosure proceedings. *Held*, that the statute is constitutional. *Gautier* v. *Ditmar*, 45 N. Y. L. J. 941 (N. Y., App. Div., May, 1911).

As there are practically no specific constitutional restrictions on taxation in New York, the present statute can only be unconstitutional if it is an improper delegation of power. If, like the old French and Roman systems of tax-farming, it included the assessment of taxes, there would probably be such delegation. See 2 COOLEY, TAXATION, 3 ed., 831. But tax-collecting requires little discretion, and the office, in contrast to other public offices, has at times been sold to the highest bidder. *Alvord* v. *Collin*, 20 Pick. (Mass.) 418. In the absence of statute a tax-lien is not transferable. *Hinchman* v. *Morris*, 29 W. Va. 673. But a party who has paid the taxes to protect an interest which he has in the property often enforces a very similar lien. *Farmer* v. *Ward*, 75 N. J. Eq. 33. The purchaser of land at an invalid tax sale may be given such a lien by statute, and in some states the statute recognizes that this lien is actually transferred to him from the state. *Arn* v. *Hoppin*, 25 Kan. 707; IND., ACTS OF 1891, c. XCIX, § 214; *Cole* v. *Gray*, 139 Ind. 396. In fact, in Georgia, since the statute of 1872, tax executions have been sold to the highest bidder, and the constitutionality of the sales has not even been questioned. CODE OF GA., 1911, § 1145.

TAXATION — PROPERTY SUBJECT TO TAXATION — TAXATION OF FOREIGN CORPORATIONS ENGAGED IN INTERSTATE COMMERCE. — Under a constitutional provision, a Minnesota statute assessed on an express company, organized in New York and engaged in interstate commerce, "a tax of six per cent upon its gross receipts for business done between points within this state, in lieu of all taxes upon its property." *Held*, that this is not a regulation of interstate commerce. *State* v. *United States Express Co.*, 131 N. W. 489 (Minn.).

The principal case presents an example of a common, though unscientific, method of taxing foreign corporations engaged in interstate commerce. Though levied in terms upon an unpermissible object of taxation, it is regarded as, in substance, a tax upon permissible objects. Since no state can regulate interstate commerce, no foreign corporation can be taxed for the privilege of doing interstate business in the state. *Atlantic & Pacific Tel. Co.* v. *Philadelphia*, 190 U. S. 160. But see *Maine* v. *Grand Trunk Ry. Co.*, 142 U. S. 217, 227. So an "occupation tax" or "franchise tax" is not permissible. *Galveston, Harrisburg, & San Antonio Ry. Co.* v. *State of Texas*, 210 U. S. 217. But all the property of the corporation within the state, both tangible and intangible, may properly be taxed by the state. *Adams Express Co.* v. *Ohio State Auditor*, 166 U. S. 185. See BEALE, FOREIGN CORPORATIONS, § 741. The substance and not the form of the tax is material. *Postal Tel. Cable Co.* v. *Adams*, 155 U. S. 688. *Cf. Postal Tel. Cable Co.* v. *City of Richmond*, 99 Va. 102, 108. And this method